IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4014 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MADAN MOHAN MAROL

Versus

GUJARAT UNIVERSITY

Appearance:

1. Special Civil Application No. 4014 of 2002

MR DC RAVAL for Petitioner No. 1

MR MITUL K SHELAT for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 08/05/2002

ORAL JUDGEMENT

The petitioner is a post-graduate student preparing for M.S. (Surgery). His grievance is that he is not being permitted to appear at M.S. examination,

which is to be held in May 2002.

2. Respondent No. 1 University framed a policy, in pursuance of a Resolution dated 20.2.2001, that a candidate who fails four times in any post-graduate examination will have to go back and study for one full year under his/her own teacher. Then only the candidate will be permitted to appear at post graduate examination and that too, for maximum 2 trials. In pursuance of the said Resolution, the petitioner was not permitted to appear at M.S. examination to be held in May 2002 on the ground that the petitioner had failed more than 4 times at the M.S. examination. The petitioner has been aggrieved by the resolution referred to hereinabove.

3. It has been submitted by learned advocate Shri Dipak Raval appearing for the petitioner that the petitioner passed his M.B.,B.S. examination in 1986 and thereafter he joined post-graduate studies for M.S. (Surgery). It has been submitted by him that the petitioner was never given any intimation with regard to the resolution referred to hereinabove and the said resolution was passed without hearing the petitioner and other similarly situated students. As the said resolution adversely affects the petitioner and other similarly situated students, the resolution is bad in law as it was passed without giving an opportunity of being heard to the petitioner. Moreover, according to him, the resolution is also unreasonable.

4. It has been also submitted by the learned advocate that the said resolution is said to have been passed in pursuance of regulations made by the Medical Council of India and the respondent University has not given any detail with regard to the regulation in pursuance of which the resolution referred to hereinabove has been passed.

5. It has been submitted by the learned advocate that the petitioner is a married person having a family and if he is asked to study again, he would not get stipend or any income and in that case he will have to prosecute his studies without having any income and due to that reason his fundamental right to have education would be adversely affected because he would not be in a position to study.

6. It has been also submitted by the learned advocate that the resolution was passed in February 2001 and the said resolution cannot have retrospective effect. The petitioner is a scheduled caste candidate and

therefore some favour should be done to the petitioner.

7. Thus, it has been submitted by learned advocate Shri Raval that the said resolution should be quashed and set aside and the petitioner should be permitted to appear at M.S. examination to be held in the month of May 2002.

8. In pursuance of notice issued by this court, learned advocate Shri Mitul Shelat has appeared for the respondent authorities. An affidavit-in-reply has been filed on behalf of the respondents by Shri Mahendra Jadia, Registrar of Gujarat University.

9. It has been submitted by learned advocate Shri Shelat that so as to maintain the standard of medical education, at the meeting held on 20.2.2001, the Faculty of Medicine passed the resolution in question and the said resolution has been approved by the Academic Council of Gujarat University. It has been submitted that it was not necessary to hear the petitioner or other similarly situated students before passing the said resolution. The said resolution is not an administrative order. It is in the nature of legislation and as held by the Hon'ble Supreme Court in the case of Union of India and anr. v. Cynamide India Ltd. & Anr., 1987 SC 1892, it was not necessary for the respondent authorities to hear the petitioner or other students.

10. It has been submitted by the learned advocate appearing for the respondents that the resolution in question has not been passed in pursuance of any recommendation made by the Medical Council of India. It has been submitted that the petitioner has not properly interpreted letter dated 6.2.2002 addressed to some of the Superintendents of Government Hospitals by the Medical Superintendent and Director, which is at Annexure 'B' to the petition. It has been submitted by him that the resolution in question had been passed by the Faculty of Medicine and it has been approved by the Academic Council of the Gujarat University. The said resolution has nothing to do with the recommendation made by the Medical Council of India. It has been submitted that the first para of the said letter and the resolution cannot be correlated as suggested by the learned advocate for the petitioner.

11. It has been submitted that the said resolution has been passed so as to see that the students who fail on several occasions are given proper training and education because on account of research and inventions

in the field of medicine, it becomes necessary for the student to remain up-to-date. If a student fails for 4 times or so, he would not be in touch with the latest research etc. and if he is asked to study again, he would become up-to-date and that would help not only him, but the medical profession and the patients also. In the circumstances, after due deliberation and careful consideration the Faculty of Medicine and the Academic Council had taken the above-referred decision.

12. So far as the petitioner's right to earn his livelihood is concerned, it has been submitted by the learned advocate appearing for the respondents that the petitioner has no legal or fundamental right to get stipend. If the petitioner does not want to study further, it is for him to decide.

13. It has been submitted by the learned advocate that the petitioner has been given around 17 trials and yet he has not been able to clear the M.S. examination. He has added that this fact reveals that the petitioner is not up to the mark and it would be in his interest to study afresh so that he can get through the examination.

14. Thus, it has been submitted by the learned advocate appearing for the respondents that the impugned resolution is just, legal and proper and the petitioner cannot be granted the relief as prayed for in the petition.

15. I have heard the learned advocates and have perused the relevant record. It is not in dispute that the Faculty of Medicine has passed the resolution dated 20.2.2001, whereby it has been decided that if a candidate fails 4 times in any post graduate examination, he has to study for one full year again under his own teacher and thereafter the said candidate can be permitted to appear at the post graduate examination for maximum 2 trials.

16. In my opinion, the said resolution cannot be said to be unfair or unjust. If a student fails and is not in touch with the subject for more than 4 years, there is nothing wrong if he is asked to study again. In the instant case, it is pertinent to note that the petitioner was given 17 trials and yet he could not get through the examination and, therefore, he should study the subject again. Within the span of 17 years there must be several developments in the field of medicine and if the petitioner is not made aware of the developments by his teacher, who had initially taught him, or any other

teacher who can teach him the subject, the petitioner would not be in a position to know the latest developments in his own field. In the circumstances, it cannot be said that the resolution is unreasonable or unjust.

17. It is true that the resolution was passed without hearing the petitioner. In my opinion, the petitioner or other similarly situated students do not have any right to be heard before passing such a resolution. It is true that the resolution is in the nature of legislation and therefore it is not necessary for the University authorities to hear the petitioner or any other person before taking such a decision. It is pertinent to note that the resolution was passed in February 2001. The petitioner's case is that the petitioner was not aware of the said resolution. If this is the position, no fault can be found with the University authorities because it is not necessary for the University authorities to give any intimation of such a resolution to the concerned students.

18. So far as the submission with regard to violation of fundamental right is concerned, in my opinion, the said submission is devoid of any merit. It is for the petitioner to decide whether he should study or earn. The petitioner has no legal or fundamental right to get stipend even after availing 17 trials. The submission that the petitioner belongs to scheduled caste and therefore he should be given special treatment is also not well-founded. There is no provision for giving any special treatment to scheduled caste students and therefore the petitioner cannot be given any special treatment.

19. For the aforesaid reasons, I do not find any substance in the petition and the petition is rejected. Notice is discharged.

The amount deposited by the petitioner with this court shall be returned to him or his lawyer on his behalf.

(A.R. Dave, J.)

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